

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 215

ARTHUR GOODWYN BILLINGS, PETITIONER

vs.

KARL TRUESDELL, MAJOR GENERAL, UNITED STATES ARMY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

## INDEX

	Original	Print
Record from D. C. U. S., District of Kansas	A	1
Caption	A	1
Petition for writ of habeas corpus	1	1
Order issuing writ of habeas corpus	3	2
Writ of habeas corpus and return	4	2
Respondent's return to writ of habeas corpus	5	3
Certified copy of charges preferred against Private Arthur G. Billings and order for his confinement	6	4
Petitioner's reply	7	5
Statement of evidence	9	6
Appéarances	9	6
Colloquy between Court and counsel	10	6
Opening statement for respondent	10	7
Opening statement for petitioner	14	9
Testimony of Arthur Goodwyn Billings	18	11
Colloquy between Court and counsel	60	34
Reporter's certificate to statement of evidence [omitted in printing]	68	38
Memorandum opinion, Hopkins, J.	69	38
Order discharging writ of habeas corpus	80	48
Findings of fact	80	49
Conclusions of law	81	49
Notice of appeal	83	50
Note re filing of cost bond	83	51
Orders enlarging time to file and docket appeal	84	51
Clerk's certificate [omitted in printing]	86	51

	Original	Print
Proceedings in U. S. C. C. A., 10th Circuit.....	87	51
Order of submission.....	87	51
Opinion, Phillips, J.....	88	52
Judgment.....	94	56
Note re issuance of mandate.....	94	56
Clerk's certificate (omitted in printing).....	95	56
Order granting certiorari.....	96	56

**A In District Court of the United States for the District of  
Kansas, First Division**

**In the Matter of the Application of ARTHUR GOODWYN BILLINGS  
for a Writ of Habeas Corpus, Civil 776 H. C.**

1 *Petition for writ of habeas corpus*

**Filed August 14, 1942**

Comes now the petitioner, Arthur Goodwyn Billings, by his attorney Wm. D. Reilly and applies to the above named court and to the Honorable Richard J. Hopkins, Judge thereof, for a writ of habeas corpus and represents to said court and Judge that said petitioner is being restrained of his liberty by Lieutenant Colonel C. L. Malone, Commanding Officer, Reception Center, United States Army, Ft. Leavenworth, Kansas.

Your petitioner further respectfully represents that he is not a member of the armed force of the United States and that he is not subject to military jurisdiction and that if he has violated any laws they are the civil laws of the United States and he is entitled to be heard in the civil courts in that he is not subject to military law.

Wherefore, your petitioner prays that a writ of habeas corpus be directed to Lieutenant Colonel C. L. Malone, Commanding Officer, Reception Center, United States Army, Ft. Leavenworth, Kansas, or to any of his subordinates, directing them to bring your petitioner, Arthur Goodwyn Billings, into and before the honorable United States District Court for the District of Kansas, and that they be ordered to file inot this honorable court any and all instruments or pretended process or authority under which they seek to restrain and hold your petitioner from his liberty.

**WM. D. REILLY,**  
*Attorney for Petitioner,*  
*Leav., Kansas.*

**STATE OF KANSAS,**

*Leavenworth County, ss:*

Arthur Goodwyn Billings, of lawful age, being first duly sworn on oath deposes and states that he is the petitioner in the above entitled court and cause, and that he has read the above and foregoing Petition and the statements and allegations therein contained are true.

2 Further affiant saith not.

**ARTHUR GOODWYN BILLINGS.**

Subscribed and sworn to before me this 13th day of August

[SEAL]

**ANN RAPP,**

**A. D. 1942.**

*Notary Public.*

**My Comm. Expr: June 26, 1943.**

[File endorsement omitted.]

3

## In United States District Court

[Title omitted.]

*Order Issuing Writ of Habeas Corpus*

(Filed Aug. 15, 1942)

Now on this 15th day of August 1942 the duly signed and verified petition of Arthur Goodwyn Billings has been presented to me, Richard J. Hopkins, Judge of said United States District Court for the District of Kansas whereby it is alleged that Arthur Goodwyn Billings, petitioner herein, is about to be illegally taken into custody without due process of law, and from said petition it appears to me that writ of habeas corpus ought to issue;

It is therefore considered, ordered, adjudged, and decreed that a writ of habeas corpus issue out of and under the seal of the Clerk of the United States District Court directed to Lieutenant Colonel C. L. Malone, Commanding Officer, Reception Center, United States Army, Ft. Leavenworth, Kansas, or his agents or representatives commanding him, or they, to have the body of the said Arthur Goodwyn Billings before me in the United States District Court at Leavenworth, Kansas, on the 18th day of August A. D. 1942 at 10 o'clock A. M. of said day to do and receive what shall then and there be considered and ordered concerning the said Arthur Goodwyn Billings together with the time and cause of his detention, and that he have then and there the said writ.

In witness whereof, I have hereunto set my hand this 15th day of August 1942.

RICHARD J. HOPKINS, *Judge.*

[File endorsement omitted.]

4

## In United States District Court

*Writ of habeas corpus and return*

(Filed Aug. 26, 1942)

**The PRESIDENT OF THE UNITED STATES OF AMERICA to MAJOR GENERAL KARL TRUESDELL IN LIEU OF LIEUT. COLONEL C. L. MALONE, Commanding Officer, Reception Center, United States Army, Fort Leavenworth, Kansas, Greeting:**

You are hereby commanded that you have the body of Arthur Goodwyn Billings, petitioner, restrained of his liberty, as it is said, together with the day and cause of his being taken and detained, before the Honorable Richard J. Hopkins, Judge of the District Court of the United States, for the District of Kan-



sas, First Division, at the court room in the Federal Building, in Leavenworth, Kansas, on Tuesday, August 18, 1942, at 10:00 o'clock A. M., and then and there submit to and receive whatsoever the said Judge shall then and there consider, and you shall then and there have this writ.

Witness the Honorable Richard J. Hopkins, United States District Judge, at Topeka, Kansas, this 15th day of August 1942.

HOWARD F. McCUE, Clerk,  
United States District Court.

By NELLIE CLOUGH, Deputy.

[SEAL]

#### UNITED STATES MARSHAL'S RETURN

I hereby certify and return that on the 17th day of August 1942, I received the within writ at Kansas City, Kansas, and executed the same by delivering personally to the within-named Major General Karl Truesdell, a true and certified copy of this writ with all endorsements thereon at Fort Leavenworth, Kansas, on August 17th, 1942.

W. M. LINDSAY,  
United States Marshal.

By JOSEPH P. REGAN,  
Deputy United States Marshal.

Fees and costs: \$4.80.

[File endorsement omitted.]

5

In United States District Court

[Title omitted.]

*Respondent's return to writ of habeas corpus*

Filed Aug. 18, 1942

*To the Judge of the District Court of the United States for the District of Kansas, First Division:*

The respondent, Major General Karl Truesdell, United States Army, upon whom has been served a writ of habeas corpus for the production of the body of Arthur Goodwin Billings, respectfully makes return and states that he holds the said Arthur Goodwin Billings by authority of the United States as a soldier in the United States Army under the following circumstances:

That the said Arthur Goodwin Billings was duly inducted as a soldier in the service of the United States at Fort Leavenworth, Kansas, on or about August 13, 1942, for a term of the duration of the war and six months.

The said Arthur Goodwin Billings has been placed in confinement and formal charges have been preferred against him for wilful disobedience of a lawful command of his superior under Article of War 64, a copy of which charge, and of the order under which said Arthur Goodwin Billings is held in confinement, duly certified and verified, are hereto attached; and that he will be brought to trial thereon as soon as practicable before a Court-Martial, to be convened by the Commanding General of the Seventh Service Command, SOS, United States Army, Omaha, Nebraska.

In obedience, however, to the said writ of habeas corpus, the respondent herewith produces before the Court the body of the said Arthur Goodwin Billings, and for the reasons set forth in this return, prays this Honorable Court to dismiss the said writ.

KARL TRUESDELL,  
Major General, U. S. Army.

Dated August 18, 1942.

Received a copy Aug. 18, 1942,

WM. D. REILLY,  
Atty. for Petitioner.

[File endorsement omitted.]

6 *Certified copy of charges preferred against Private Arthur G. Billings and order for his confinement*

HEADQUARTERS RECEPTION CENTER 1773

FORT LEAVENWORTH, KANSAS

AUGUST 14, 1942.

Subject: Confinement of Enlisted Man.

To: Provost Marshal, Ft. Leavenworth, Kansas.

Request that Private Arthur G. Billings, 37217409, Induction Station, unassigned, Ft. Leavenworth, Kansas, be confined at the Post Guard House under the 64th Article of War.

JESSE T. STOCKS,  
2nd Lt., Inf., Officer of the Day.

Charge: Violation of the 64th Article of War.

Specification: In that Private Arthur G. Billings, A. of U. S., Unassigned, having received a lawful command from 1st Lt. Godfrey B. Nemec, Infantry, his superior officer, to affix his fingerprints to an induction record, did at Fort Leavenworth, Kansas, on or about August 13, 1942, willfully disobey the same.

I hereby certify that the foregoing is a full and true copy of the original charges preferred against Private Arthur G. Billings,

A. of U. S., Unassigned, and of the original order for his confinement, and that the same are in the usual form of military charges, and that such charges and order conform to the rules regulating military procedure.

! EDWARD,  
Asst. Adjutant General.

Sworn to and subscribed before me this 17th day of August 1942.

ALLAN R. BROWNE,  
Captain, JAGD, Staff Judge Advocate.

[File endorsement omitted.]

7 In United States District Court

[Title omitted.]

*Petitioner's reply*

Filed Aug. 18, 1942

Comes now the petitioner and in reply to the Response filed herein by Major General Karl Truesdell, United States Army, denies that he was duly inducted as a soldier in the service of the United States at Ft. Leavenworth, Kansas, on or about August 13, 1942, for the term of the duration of the war and six months.

Petitioner states further by way of his Reply that he is a conscientious objector and that as such conscientious objector he filed with his local Selective Service Board his conscientious objections to service in the armed forces of the United States and that said board overruled his objections and classified him as 1A for army service;

That upon receipt of the decision of the local Selective Service Board at Delphos, Ottawa County, Kansas, that he appealed said decision to the state appeal board and said state appeal board denied said appeal;

That he did not present himself at said local Selective Service Board but did present himself to the Reception Center, Ft. Leavenworth, Kansas, and that at the time he was asked to take the oath of induction he refused to take said oath; that he was commanded to stand at the time said oath was about to be given, which he refused to do; that he remained seated and that during the giving of said oath he was restrained of his liberty by the officers of the United States Army on duty at said Reception Center and that several officers were asked to be present in a small office at said Reception Center, the exact number of officers this petitioner is unable to state, and that against his will, and without

his consent the oath was read and he was then asked if he subscribed to said oath, which he refused to do informing said officers that he was a conscientious objector.

8 Wherefore, Your petitioner asks that the court grant this writ of habeas corpus ordering his release from the custody of Major General Karl Truesdell, United States Army, and that he be ordered into the custody of the United States Marshal for the District of Kansas in accordance with the provisions of Section 11, The Selective Training and Service Act of 1940 of the United States Statutes.

[File endorsement omitted.]

A. G. BILLINGS,  
*Petitioner.*

By WM. D. REILLY,  
*Attorney for Petitioner.*

9 In the District Court of the United States for the District of Kansas, First Division.

[Title omitted.]

*Statement of Evidence*

Hearing had before the Honorable Richard J. Hopkins, judge of the above entitled court, without a jury, at Leavenworth, Kansas, Tuesday, August 18, 1942.

*Appearances*

The petitioner was present in person and by his attorney, William D. Reilly, of Leavenworth, Kansas.

Respondent was represented by Honorable Lester Luther, Assistant U. S. District Attorney, of Topeka, Kansas, and by Captain Allan R. Browne and Lieutenant W. H. Edwards, both of the Judge Advocate General's Department, Leavenworth, Kansas.

The parties having announced ready, the cause proceeded as follows:

10 *Colloquy Between Court and Counsel*

MR. REILLY: I have a reply to the response I would like to file.

I have gone over the petition here, if the Court please. The question in this matter, your Honor, is whether or not under the Selective Service Act of 1940, the petitioner is amenable to trial. It is recognized that he has violated the Selective Service Act.

The Court. He admits that he has?

MR. REILLY. He admits that he has refused to take the oath of induction, refused to do service in the army. The question

is whether under the Selective Service Act of 1940, he is subject to trial by a court martial under the military authority or whether he is subject to trial in the civil courts in the United States District Court. Would the court rather hear the evidence first and then I have some points of law I would like to argue?

The Court. Yes, I think we will hear the evidence. Do you wish to make a statement?

*Opening Statement for Respondent*

Captain BROWNE. I should like to; yes, sir. I think it will develop that the principal point before you is just a question of whether the army has taken—under the law is entitled to the custody of this petitioner Billings, whether they have gone far enough in the procedure under the Selective Service Act so that the civil authorities have ceased to act and the military have begun. I have just read his reply to the respondent's return and I notice from that reply that apparently under their view, we would be entitled to a judgment on the pleadings. I should like, if I may, to reserve that oral motion until such time as your Honor is ready to receive it, but the issues will resolve into this: at what point does the Selective Service Act under which we now operate, the Act of 1940, take a man from the civil jurisdiction and put him in the military jurisdiction? We contend that that is all decided by what are called the Articles of War, which are the law of the land, and are found in Title 10, Section 1473 of the United States Code Annotated which I have here, and particularly this one paragraph which, if you don't mind, I will read since it is very short, as I think it goes to the very nub of it. "The following persons are subject to these articles and shall be understood as included in the term 'any person subject to military law,' or 'persons subject to military law whenever used in these articles:' • • • all officers, members of the army nurse corps, warrant officers, army field clerks, members of the quartermasters corps and soldiers belonging to the regular army of the United States; all volunteers from the dates of their muster or acceptance into the military service of the United States," that is this man, "and all other persons lawfully called, drafted or ordered into," ordered into, "or to duty or for training in the said service from the dates they are required," and here is the date he was talking about, "from the dates they are required by the terms of the call, draft or order to obey the same." That is the nub of our position, your Honor. "From the dates they are required by the terms of the call to obey the same." He was required to appear August 13th. He was a conscientious objector, he said, and he registered as such. He followed the procedure



set out by the Selective Service Act by asking for a hearing by the draft board where he lived in Minneapolis, Kansas. He got that hearing. He was denied his alleged rights as a conscientious objector. In other words, the Board found against him. He still followed the law and appealed to the Board. That appeal board heard him fully, we must presume, and denied it. He sets that up in his return, in his reply. They denied he was a conscientious objector under the law, which requires that he must be an objector because of religious training and not personal conviction—but religious training, and that means, as I see the law, that he was finally denied that. A finding of fact was made that he was not a conscientious objector, which is binding on our state courts if the Board has jurisdiction. His next move was that he came up here to take the physical examination. We have a written statement from him, and the evidence no doubt will show that he did take the physical examination hoping that he would be rejected because of defective eyesight, still following the law, you see. However, his eyesight was not sufficiently poor to reject him, and he was accepted, much to his chagrin and surprise according to his statement. So then the next 13 move was for the oath to be read to him. Of course, under our contention he was in from the time of the date that he was due to answer the call, which he did himself voluntarily. He was asked or ordered to stand—the terms make no difference in this proceeding. He was asked to raise his hand and he refused to raise his hand or to stand. The oath was read to him then and at the conclusion of the oath, he said he did not subscribe to it. The Selective Service Act, I think, mentions the oath, but it gives the President the authority to make rules and regulations, your Honor. Under those regulations, inductees are inducted, and one of the regulations that the President made through the Secretary of War—of course, he acts through him in all these military matters—was that, anticipating this sort of a thing, if an inductee refused to subscribe to the oath, that that was of no importance; that he would then be notified he was in the army anyway and he was in the army, so that procedure was followed by the officers charged with the induction here. Other things followed. He was ordered to be fingerprinted which he refused, and which things I think are not material in this particular hearing. That is the statement I wish to make.

Mr. REILLY. Since the Captain has gone ahead and given his position and quoted the Articles of War, I think the Captain will concede the Articles of War he is contending upon were passed, I think, in 1920. Is that true?

Captain BROWNE. They have never been replaced,



14 Mr. REILLY. That is right.

Captain BROWNE. I don't recall the date. I have it here.

Mr. REILLY. I think they were passed prior to 1940.

Captain BROWNE. June 4, 1920.

*Opening Statement for Petitioner*

Mr. REILLY. 1920, that was my idea, and I think the Articles of War as so drafted at that time, had in mind the Selective Service Draft Act of 1917, which provides among other things in Paragraph 202 of the Act as follows: "All persons drafted into the service of the United States and all officers accepting commissions in the force herein provided for, shall from the date of said draft or acceptance, be subject to the laws and regulations governing the regular army." That was the 1917 draft, and I think the two outstanding decisions cited in connection with the draft of 1917, are the cases of Franke vs. Murray and Ex parte Therut. Franke vs. Murray was a decision in which former circuit Judge William Hook of this particular district sat as a presiding judge, and there is a provision there in which they hold from the time a man is notified he is in the draft that he is then subject to military law, and they quote that particular paragraph of the Selective Draft Act of 1917. But, your Honor, the Selective Service Act of 1940, omits all of that and no place do we find in the Selective Service Act, or have I been able to find in the Selective Service, what they call the Selective Training and Service Act of 1940, such provision. It does, however, and I want to call your attention to the paragraph in the 1917 Act, the part that deals with offenses and punishment. When you get down to the punishment, it says: it goes on to say, "who if he shall fail or neglect fully to perform any duty required of him in the execution of this Act shall, if not subject to military law," I take it that would apply to members of the Draft Board and the Appeal Board, "Shall be guilty of a misdemeanor and upon conviction in a District Court of the United States having jurisdiction thereof, be punished by imprisonment of not more than one year or if subject to military law, shall be tried by the court martial and suffer such punishment as a court martial may direct." That is 1917. Now then, we go over to the Training and Service Act of 1940, and in Paragraph 311, which is shown here in Title 50 of the United States Code Annotated, it goes on and says, "shall upon conviction in the District Court of the United States of America having jurisdiction thereof, be punished by imprisonment of not more than five years or a fine of not more than ten thousand dollars or both such fine and imprisonment, or if subject to military

or naval law, may be tried by court martial, and upon conviction shall suffer such punishment as the court martial may direct." Then is this added, the following sentence: "No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted for training and service prescribed under this Act, or unless he is subject to trial by a court martial under the law in force prior to the enactment of this Act. Precedent shall be given by the Courts to the trial of such cases arising under this Act."

Our contention is that his induction is not complete despite the fact there may be an army regulation that he does not have to subscribe to the oath. Our contention is that he is not inducted until he does subscribe to that oath, and until he does, it is the old army phrase which we all knew in the last war, until we put up our hand and said "I do," we weren't under the military and he was still amenable to the civil laws of the United States. Now, that is the point in the case all through. I have drawn the petitioner's application for a writ hastily, but I have attempted to set forth the main facts; that he did not subscribe to the oath, did not complete his induction; the reading of the oath was under duress; he was alone; there were a number of officers present and while I think the evidence will show he had already contacted an attorney, that the army did not wait for the attorney to arrive there, but proceeded in the presence of a number of officers to read this oath to him and give him these various commands.

The COURT. Why had he contacted an attorney, may I inquire?

Mr. REILLY. He at the time announced that he was a conscientious objector and they gave him permission to call the United States District Attorney and in his conversation the United States District Attorney mentioned the names of several lawyers in this community.

The COURT. Of whom you were one.

Mr. REILLY. (Continuing.) And somehow or other I was one and he selected me. As to what he thinks is a conscientious objector, that has nothing to do with me, but I feel that Congress has specifically added a provision; that the substance of the rest of that particularly section is almost the same as the section of 1917; that under the Act of 1917, military authority took the position that as soon as a man received his notice to report or his questionnaire or anything of that character and failed to report, the army immediately charged him with desertion and he was tried before a court martial. I think in the Selective Service Act of 1940, Congress, having those cases in mind and this opinion here that was written by Judge Trieber who was a district judge

that sat with the Circuit Court of Appeals, changed all that. In that opinion he goes on and says and he quotes that part I read a while ago; that the Selective Draft Act provides all persons drafted into service of the United States shall from the date of said draft or acceptance be subject to the laws and regulations governing the regular army. That was an appeal in which the question was up whether or not he was a deserter; that in order to be a deserter one must be actually in the military service and until he has been sworn in as a soldier, he has lost his status as a civilian.

They decided in that case under the Selective Service Act of 1917 that he was a deserter from the time he was amenable to that particular law and his failure to register or his failure to fill out his questionnaire and his failure to present himself at the draft board made him a deserter, but in the 1940 Act, the Congress of the United States has seen fit to add that provision there that unless they are actually inducted, they should be tried in the United States District Court, and not before a military or naval court.

ARTHUR GOODWYN BILLINGS, the petitioner herein, called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. REILLY:

There are some preliminary questions here, your Honor. I want to go through the various stages there because there are some decisions and they are quoted in the manual of the Selective Service, where he must have exhausted his remedies before the local board before he is entitled to come into the Federal Court on a writ of habeas corpus. They are decisions to that effect.

Captain BROWNE. We can stipulate if it is agreeable with the Court that he has exhausted his remedies. In fact we urged that he exhaust his remedies.

19 The COURT. Doesn't your reply to the response set out what you have done? In other words, you allege that in answer to the rules and regulations, he registered; that he went before the Board and claimed that he was a conscientious objector. The board found against him. He appealed from that ruling and the state board found against him. He still came to Leavenworth.

Mr. REILLY. I would like the record to show as to how he came to Leavenworth.

The COURT. Yes, well, let's find out. Let me do a little questioning. All right, what is your name?

By the PETITIONER. Arthur Goodwyn Billings.

By the Court:

Q. How old are you?

A. Thirty-one.

Q. Where is your home?

A. Well, I was teaching at the University of Texas, teaching economics a week ago, but I used to live in Delphos, Kansas, and it was there, in Ottawa County, that I registered for the draft.

Q. When did you register?

A. I registered with the first registration, but on my card I wrote at that time that I would never serve in the army and I meant that.

Q. Well, what next did you do with reference to your entering the army?

A. Well, the next, let me see. First I made up my mind at the time I registered that I would go up to the point—

I asked at the time at what point one would leave civil jurisdiction and enter military jurisdiction.

Q. Who did you ask?

A. I asked the draft board and I also asked the state draft headquarters. They are all military officials in Austin, Texas.

Q. The question I want to know is what did you do?

A. Oh, yes, with regard to the draft itself, I submitted first to a preliminary physical examination and was put in Class 1-B, which is fit only for noncombatant service. Then I wanted to appeal that on the grounds of conscientious objection, but at that time there was a regulation that persons in Class 1-B could not appeal. Later on, that was repealed, but anyway in January,—then later I was put in 1-H, which was because I was over twenty-eight. Then in January of this year, January 28th, I believe it was, I came up for reclassification and I, like all the others in Class 1-B, was put in 1-A. I then was allowed to appeal the thing.

Q. That was at Minneapolis?

A. That was at Minneapolis. And they first allowed me a hearing, and I must say they allowed me to present my case. They were quite — although some of their attitude at first

was a little malicious, I thought, they allowed me to present my views quite fairly, but the appeal agent who was also pres-

ent, he used to be the County Attorney in our county said at the time, well, after I had expressed my views and so on,

"This is a rational conviction, not a religious conviction." My contention is that a rational conviction—

Q. I want to know what you next did?

A. Oh, I see. Then at this hearing, they didn't change their decision to leave me in 1-A, so I next appealed the case to the

Board of Appeals, and they simply reviewed the findings of the Local Board. There is no hearing actually before the Board of Appeals. However, the Department of Justice, in the case of conscientious objectors, does have the F. B. I. conduct an investigation, and they questioned a former maid of our family and a great many people in my home community and people at the University, people at Harvard University, where I had been studying, too, and then finally they called me to Wichita, Kansas, for a hearing before Mr. Charles Yankey, who is the state agent of the Department of Justice in cases involving appeals of conscientious objectors.

Q. Well, anyway, they appeared to make quite a thorough investigation of your case?

A. I believe they did make a thorough investigation, and it their impression, Mr. Yankey said, that nobody had questioned my sincerity, the sincerity of my convictions, and so forth, but he said what was the question was whether the intent of the law covered an objection such as mine, under the phrase  
 22 "by reason of religious training and belief," since I was by admission a free thinker on theological matters. I believe in the common sense of Christianity. I believe the rules that are attributed to Christ are the best rules. I am firmly convinced those are the best rules of human conduct. They were also advocated by Buddha, Gandhi, and others; but I have been very doubtful—I do not believe, frankly, that Christ was divine, but that hasn't shaken my belief in these principles which stand on their own feet, I think.

Q. Well, I take it that you have had a pretty good education?

A. Yes; I have had nine years of university and three years in the American Diplomatic Service.

Q. Nine years' university work. What do you mean by that?

A. I had four years in the University of Kansas, and two years—

Q. Did you graduate?

A. Yes.

Q. When?

A. 1933.

Q. What did you do next?

A. Then I went to the University of Paris, as I started to say, for two years, and after that I entered the American Diplomatic Service and served for three years in the American Embassy in Moscow under Ambassadors Bullitt and Davies. Then in 1938 I resigned and took four months' vacation out in China and Japan and then came back and that fall entered Harvard



University, where I studied, for the first time, economics.  
 23 In the past I have been planning in political science and international relations in Russian. I studied at Harvard three years, took my Masters, and passed the general examination for the Doctorate, but I haven't yet written my thesis.

Q. You have your Masters?

A. No; for the Doctors; so that I haven't my Doctorate complete, although about two-thirds of the work is done. Then I was hired by the University of Texas to teach economics, and I have been teaching there until about, oh, around—the last time a week ago Saturday.

Q. How long did you teach there?

A. Well, I started in the fall of last year. I was hired there last year.

Q. 1941.

A. Yes; I just got out of Harvard last year.

Q. Well, you are not married?

A. No; I am single.

Q. You have a mother?

A. My mother died when I was three.

Q. You have some other relatives, have you?

A. Yes; I have a father who lives in Delphos, Kansas. I have a little brother. Well, he is a year younger than I am, who is in the navy, and an older brother who lives in Minneapolis, Minn. Then I have a second stepmother. I have had two stepmothers. I have a second who lives with my father.

24 Q. They are still living—your father and your stepmother are still living?

A. Yes; they are still living.

Q. Live at Delphos?

A. At Delphos, Kansas. That is right.

Q. I take it from all you have told me that you have known what has been going on in the world the last ten years?

A. I think so.

Q. You knew of the Conquest by Japan and Italy and Germany?

A. I have seen part of it. I have been in the south of Manchuria and in Japan and China; yes, sir.

Q. You have read, have you, of the depredations committed by the Japanese?

A. I have read of those, but I think some of those reports are very much exaggerated, and I think after the war this will be admitted officially, just as it was after the last war, that many alleged German atrocities did not in fact take place.

Q. You have heard of the German atrocities in this war?



A. Yes; I have heard many alleged. I think undoubtedly some are true.

Q. You have heard of the bombing of Rotterdam?

A. Yes.

Q. And the killing of thousands of people after the surrender of that town?

25 A. I have heard of that; yes, and I think that is quite possible, because when people start war, that is wholesale murder anyway, and they are absolutely ruthless. I think perhaps our own army would be equally ruthless in bombing cities.

Q. And since they have declared war on this country, you have heard of Pearl Harbor?

A. Yes, sir; I have.

Q. And the massacre of many of our fine——

A. Yes; I have.

Q. Young men, thousands of them, without warning; and yet, at the moment, their ambassador was talking peace?

A. Yes; I think that was very treacherous on the part of the Japanese. However, I think that was not without a certain amount of provocation from their point of view, because Secretary Knox a month before had boasted that American army fliers on leave from the Army Air Corps were dropping army made bombs from army made planes on the Japanese in China. When we were fighting in Nicaragua, if Tojo had boasted that Japanese fliers were dropping Japanese made bombs from Japanese made planes on American troops in Nicaragua, I believe we would have regarded that as a perfect cause of war.

Q. Out of all this, you are rather an able-bodied young man?

A. Well; these people found I was fit only for noncombatant service, because my right eye is bad.

Q. How tall are you?

26 A. I am approximately six feet tall.

Q. How much do you weight?

A. About one hundred sixty-five.

Q. Do you have any other physical defects other than your eyes?

A. At one time in Russia. I thought that I was catching tuberculosis; and I went to a Russian clinic, and they told me that I had an enlarged heart. That was what was causing pains in my chest, but the people here don't find that. I don't know. I am not a medical authority myself. I have worked at very hard work. I used to work in a grain elevator loading cars, and I think it is quite possible that I do have an enlarged heart; but, anyway, according to the army military authorities, the only thing which they find definitely that puts me out of the combatant class is my bad right eye.

**Q.** Out of all your education, your experience, and the conditions existing in the world, you think you should stand by and let the Germans and the Italians and the Japs come into the country and murder our people and rape our women?

**A.** No, sir.

**Q.** And do all the other things, and you would do nothing about it; is that your attitude?

**A.** Sir, I do not think that that is at all the situation. I think when you meet violence with violence, then you have rape, and you are doing a lot of killing. I have seen, for instance  
27 in Pekin, where they met violence just by not doing anything at all, the Japanese came in there, and there were a few Japanese around, but ninety-nine people out of one hundred went about their business as before. The Chinese police force remained in power, and so on. I don't think, sir, that is the alternative.

**Q.** Your theory is about that of Gandhi, isn't it?

**A.** More or less. It is somewhat like that.

**Q.** That you would do nothing about it?

**A.** No; I would do something.

**Q.** Well, you would have everybody go on a strike and would offer no physical resistance and you would even negotiate with the Japanese?

**A.** Yes; I believe I would, in this sense: I believe that one should recognize that these people are misguided. Gandhi, I think, has the right idea. He tells the Indian people, "The British have wronged you." "That is true, but you must not hate them. Recognize they are misguided; and in your actions towards them, don't act as if you hated them. Just refuse to cooperate." That is all he says. I think if that policy were pursued with regard to even an invading army, if there was no hatred on the part of the people into whose country they came, but, on the other hand, they made it evident every moment to every soldier that came in the country that while they had no hatred toward them, that they would just go out. I think there is enough elemental human decency in the people of all countries to do that.

28 **Q.** You think so, after the atrocities committed in Belgium and Holland?

**A.** Oh, yes.

**Q.** And Poland?

**A.** I think so.

**Q.** That we should just submit and become slaves?

**A.** I don't think—

**Q.** (Continuing.) To Germany and Japan?

A. Sir, I don't think that is the question, of submitting and becoming slaves to these countries. I think they should be resisted, but without hatred.

Q. How is your method of resistance?

A. What?

Q. What is your method of resistance? You think they should be resisted you say?

A. Well, I am resisting, I think, what I regard as a fascist institution in this country, the army.

Q. How are you?

A. By similar methods, by refusing to cooperate with them. They may ultimately sentence me to a firing squad, but they can't go on with that forever. They can't put all the people in a country in prison. That is why, if peaceful resistance were really tried, it would work.

Q. You are a citizen of this country?

A. Yes, sir.

29 Q. We have laws in this country?

A. Yes, sir.

Q. These laws have been made by a Congress and the President?

A. Yes, sir.

Q. You do not believe that all people should obey those laws and rules?

A. I think people should obey most of the laws, but I believe that there are limits beyond which no government, even a Democracy, has the right to go in infringing upon the rights of the individual. I believe that Congress in the War of 1812 was right when they held conscription was a form of slavery. Daniel Webster lead the debate, and it was turned down on the grounds it was a form of human slavery.

Q. Well, you do not believe that each individual who objects to a law should have the right to determine for himself whether he will obey it or not?

A. Yes; every individual, I think, has some sort of sanctum of sanctums, so to speak, where beyond—into which no law, no government, has any right to go. No government has the right to make him a slave, to make him commit murder. That is what the government is offering me to do now, to go out and shoot people, or, since I am just a noncombatant, to serve as an accomplice in the murder of people I have never even seen, whom, if I met them on the street, I might like just as well as many of the people of this country.

30 The Court. I think you gentlemen may inquire.

By Mr. REILLY:

Q. Is there anything else you wish to testify to that you have not talked about?

A. Well—

Q. Let me ask you this question: When was the first time you informed the authorities at Fort Leavenworth that you were conscientiously objecting to military services?

A. Well, I believe that the first time, although I mentioned it to the boys on the bus, I got on the bus here at the Junction, and some boys from my own county were going—

Q. By the way, did you go to Ottawa County and report?

A. No; I did not report in Ottawa County. I have, by the way, their order to report, which I tore up when I saw in what high-handed way the army authorities were acting. I tore it up in order that the army authorities could not fill it out and return it to my local draft board, as they are supposed to do. I have that here.

Q. I would like to introduce that in evidence.

(A document, torn in several strips, handed to the reporter, was marked for identification as "Petitioner's Exhibit 1.")

The COURT. Very well; it will be received.

A. (By the witness.) They told me over the telephone, by the way, that they were reporting me delinquent there because I didn't show up in Minneapolis.

31 Q. By this order, what date were you asked to report at Minneapolis, Kansas?

A. On the 13th.

Captain BROWNE. Can we agree that the torn up order shows that it was the 12th of August 1942, at 10:45 A. M., at Minneapolis, Kansas?

A. I am sorry. I didn't see. I had forgotten what the date on the document was. If it is the 12th, it is the 12th.

The COURT. You can agree on that?

Captain BROWNE. Yes, the 12th of August 1942, 10:45 A. M., is that agreeable?

Mr. REILLY. Yes, he was ordered to report to—

A. Minneapolis, Kansas.

Mr. REILLY. Local Board No. 1, Ottawa County, Kansas, sitting at Minneapolis, Kansas, Ottawa County, Kansas.

The COURT. Just another question. Did somebody direct you to report to Leavenworth?

A. I will tell you—

The COURT. Just answer my question.

A. Yes.

The COURT. Who directed you to report to Leavenworth?

A. The girl who signed this thing, who is Secretary of the draft board.

The Court. At Minneapolis?

A. At Minneapolis.

32 The Court. Did she tell you when to report?

A. Well, she told me that the bus of people who were required to report in Minneapolis would pass through Victory Junction at such and such a time and I bought a ticket and got on the same bus.

The Court. Anyway, you did report?

A. I did report.

The Court. In accordance with that direction?

A. Yes, sir.

The Court. And when did you report?

A. I reported, well, if that was the 12th, then it was the evening of the 12th, yes.

The Court. The 12th of August?

A. The 12th of August, yes.

The Court. Just past. Then what next happened to you?

A. Then, let me see. I went there and somebody in charge told me—

The Court. (Interrupting.) Where did you go?

A. I went to what was the bus stop. It stopped in front of what was known as the checking station and somebody there said, "Everybody go over and find a bunk at such *at such* a place," and we walked over there to this place where the bunks were and slept there that night.

Captain BROWNE. I can't hear.

A. We slept there that night, and then we came back.

33 By the Court:

Q. What place was this where you slept?

A. This was on the military reservation.

Q. Do you know the place? How was it designated?

A. Oh, I suppose it was a barracks or something like that.

Q. United States barracks?

A. I presume so since it was on there. There were some soldiers there and some people who had been rejected on physical examination staying there too, and they were coming up for a second physical examination. There were quite a mixture of people standing there.

Q. Anyway you slept there that night?

A. Yes, sir.

Q. Then what did you do?

A. Then the next morning they took us to breakfast.



Q. Who took you?

A. Some fellow in uniform took us to breakfast.

Q. Was he an officer of the army?

A. I think he was probably a private.

Q. Anyway he took you to breakfast. Where did he take you?

A. Well, a mess hall on the reservation. All this was on the breakfast?

Q. He took you in one of the army mess halls and you had breakfast?

A. Yes.

34 Q. Then what happened?

A. Then they took us back to the checking station, some army man, again, and there we were told to go over to such and such a place for a physical examination. I have forgotten the building, but I think it was—

Q. (Interrupting.) Did you go?

A. Yes, I went.

Q. Were you examined?

A. I went and was examined.

Q. Do you know who examined you?

A. Oh, there were lots of people there who did the examining.

Q. You mean several doctors?

A. Yes, there were several doctors who examined you, specialists in each branch, and they examined me and then, let me see, you asked when was the first time I had mentioned to one of them that I did not intend to serve in the army. That was when we came to this line. We came to the psychiatrist who investigates your mentality and he said, "Do you think you will make a good soldier?" and I said, "I will never serve in the army," and he said, "You won't?" and then asked me a few more questions and then passed me on to somebody else, and they turned me, put some drops in my eyes, dilated my pupils to make a dark room examination of my eyes. They sent me outside and told me to come back in the afternoon for this dark room thing.

Well, I came back in the afternoon. They examined my  
35 eyes in the dark room and found that my right eye tested only 20/80 while for combatant service it was required that it test 20/40. That is, correctible with glasses to 20/80, so the officer; well, no, then they sent me back to an office that was marked, I believe, AP or PA, something, two letters.

Q. Associated Press?

A. Yes, there I found this psychiatrist and two other doctors apparently, and they started questioning me, and they said, "You know we find in cases like this, that oftentimes people who object to serving in the army in the way you do are schizophrenics and I assured them I was not a schizophrenic, that I was very sane."



I thought I was more sane than they were and they came to the conclusion that I was not a schizophrenic, and they seemed a bit sheepish about it all, but they nevertheless did. Anyway, they sent me back to Room 14 where some officer passes on the whole medical examination and he told me simply, he said, "You have been put in Class 1-B. Go back to the checking station." Well, he handed me these papers. My pupils, by the way, remained dilated. These drops keep your eyes dilated for twenty-four hours, that is, it is that long before the effect passes away entirely, so I couldn't read these papers and he said, "I-B." Formerly the 1-B's had not been drafted, and even now only a part of the 1-B's are drafted, so I hadn't known but what I was being turned down, partly because I had my suitcase in this  
 36 checking station, but I couldn't read these papers on account of my eyes being dilated so I went over and asked a boy there in blue overalls to read them for me and see what they said, and he said, "According to this, you have to be finger printed," and I said, "Well, just what does this fingerprinting involve? If it involves induction into the army, I shall refuse to be fingerprinted."

Q. That is what you told the boy in overalls?

A. Yes, and he said, "I don't know whether it does or not." He said, "I will take you to my superior officer." I couldn't see very well just where it was he was taking me. I had some misgivings that I had been very foolish in asking him; that I should go immediately outside and call the FBI, and have gotten outside of the military reservation right then.

Q. In other words, you thought somebody hooked you, is that what you thought?

A. Yes, I did, and so he brought me right into the lion's den with Lieutenant Nemec and Captain Milligan in the induction office and I told them I was going to refuse to serve in the army and they told me, "You are already within our jurisdiction" and that I wanted to turn myself over to the civil authorities and they said, "Just as soon as you entered this reservation you were under our jurisdiction." I said, I asked him (hiatus in notes) Lieutenant

37 Nemec said to the Captain, "Well, now that we know he intends to turn himself over to the civil authorities, we better put him under guard, hadn't we, to prevent him from leaving the reservation?" And Captain Milligan consented. He said he would rather put me on parole if I would guarantee I wouldn't try to turn myself over to the civil authorities, and I said I couldn't guarantee that. Then I said, "Will you allow me to phone the civil authorities from here," and Captain Milligan consented to let me phone them and I phoned first the United States Marshal, Mr. — I don't know his name.

Q. Mr. Lindsay?

A. This gentleman over here [indicating]. He talked to me over the phone in Topeka and he told me that I should call—

Captain Browne (interrupting): Just a moment, if I may. Of course, any testimony as to what some third party is quoted as saying by the witness is objected to as hearsay unless the rules are relaxed in this kind of proceeding.

The Court. Oh, yes; let him tell everything he knows.

A. Then I called the United States Marshal, and he said I should call the office of the District Attorney instead. So I phoned the office of the District Attorney and told him the circumstances, told him—oh, I forgot to mention one fact. These gentlemen told me that they would order, just read the oath to me and that would definitely make me a soldier in the army whether or not I swore to it, but before they did that, they  
38 did allow me to phone the District Attorney. I asked, "Is there anything I can do?" He said, "Well the thing to do in a case like that is try to get a writ of habeas corpus," and, he said, "Get a good lawyer."

Q. So you got Bill Reilly?

A. I told him that I didn't know offhand the name of any federal lawyers in Leavenworth.

Q. They are all federal lawyers here.

A. Well, are they? I didn't know that, and I asked him to mention, to recommend one and he said well, he couldn't recommend anyone. "That would be unethical." I said, "Will you please mention the names of several." He mentioned four names and Mr. Reilly's was the first so I called Mr. Reilly and Mr. Reilly asked if they couldn't stay reading this order or oath to me for twenty-four hours until this writ could be drawn, and they said nothing doing, they were going to read it right away.

Q. This army is sort of in a hurry apparently.

A. (Continuing.) And so about as soon as I hung up the receiver there, they took me over to some other offices, an officer, and talked to him and then took me back again and then Lieutenant Nemec got out this oath and he ordered me to stand up and I said I refused to stand up. I sat there. He said, "Raise your right hand," and I refused to raise my right hand, and then he read this oath, "Do you solemnly swear and so on and  
39 so on." I said, "I do not. I refuse to take this oath." He says, "That doesn't make any difference, you are in the army now." After that Lieut. Nemec gave me a direct order to submit to fingerprinting and I refused to obey it. So then they ordered me off to the guard house, but before they got me to the guard house, before they got me out of the building—

Q. Sort of a high-handed practice they were putting into effect?

A. Yes, yes; before they got me out of the building, Mr. Reilly arrived with this writ.

Q. I am a little afraid you got into the wrong place. You ought to have got away from Leavenworth.

A. (Continuing.) With this application for a writ of habeas corpus and as soon as I had signed that and sent a telegram—they allowed me to send in a telegram resigning from the University. I was still teaching at summer school, you see, and as soon as I had done that, they ordered me to the guardhouse and put me in solitary confinement. The first night they allowed me to have a mattress and pillow, but no bedding, and then the next day they ordered me to put on these military clothes and I was afraid that they were trying to prejudice my case further by making it appear that I was already in the army. Then it occurred to me that since this was in prison . . . it didn't occur to me right at the moment. I refused to put on the army

40 prison uniform, and then let me see. Oh, yes; they ordered me back into solitary confinement again in this cell and this time they took out the mattress and the pillow, refused me any communication with the outside, took away my address book, every single thing I had except my shirt and my trousers and left me all night in that cold cell without even a mattress or blanket or anything.

Q. What do you think the Germans would have done if they had had you?

A. Perhaps the same thing because they are fundamentally similar organizations, the Fascist, and the armies are fundamentally similar, I think. Anyway, the next morning they again ordered me to put on this prison outfit and I said if they would threaten me with violence I would put it on because then I could testify it was done only under duress so they threatened me with violence and I put this on.

Q. They did what you invited them to do?

A. Yes, and I put on this prison outfit and since then I have thought that probably it wouldn't prejudice me, my case to obey any order which I received as a prisoner since there is always a threat of solitary confinement. Some of the prisoners have been beaten in that prison.

Q. You say they have?

A. Yes, sir; they have.

Q. How do you know?

A. They have told me so.

Q. The prisoners?

41 A. I have no reason to doubt them. There are guards come through there with a little club and have threatened several times in my presence to beat the people who haven't done

what they told them. Let me see if there is anything that I should add. Oh, yes, that, so far as I knew, I made every effort. I have friends who are professors of law there at the University of Texas also, and they were rather interested in my case; and they looked up the law, and they told me——

Q. (Interrupting.) When did they do that?

A. Oh, this was last January.

Q. You were sort of getting ready for this business?

A. Oh, yes; I have expected to go to prison if I passed the physical examination. I expected to go to prison, anyway. I had made up my mind I would never serve in the army, and I would take the consequences, whatever they might be, so I had inquired from everybody whom I thought might know about the draft law. I went to the state draft headquarters at Austin, Texas. The draft headquarters are in the same city as the University, and the state officials there of the draft, who are army men, informed me that I was not in the army until or unless I took the oath of induction and take the physical examination.

Q. You know some of these officers might be mistaken as to what the law is.

A. Yes; they might be, but I take also a conscientious objector newspaper, which has reported——

Q. What is the name of this paper?

A. It is called the Conscientious Objector.

Q. Where is it published?

A. At Stone Street in New York City.

Q. Who is the editor of it?

A. I believe his name is—his last name is Thomas, I believe, but I am not sure what his first name is.

Q. Do you have any copies of that paper with you?

A. I have a copy, I believe, in my suitcase, which the prison officials there at the guardhouse have taken away from me.

Q. Will you submit that to the court?

A. Certainly; I would be glad to.

Q. All right; go ahead.

A. And in this magazine they reported a number of cases. They record cases. That is mainly what the magazine is for, to inform other conscientious objectors.

Q. Well, you have been studying and working on this question then for a good many months, I take it?

A. Oh, yes; after all, it involved my whole life, my future, and everything.

Q. Did you tell some folks that you were going to take this physical examination and you thought likely you wouldn't pass, but if you did, then you were going to refuse to serve?

43 A. Oh, yes; I told many people that. Everybody knows that, in my home town, these people at the law faculty at the University, and before I came over here.

Q. Yes. Why do you seek to get into the civil courts? If you don't believe in everybody obeying the laws and the rules, why do you wish to submit your matter to any court?

A. Well, I don't know. It is sort of like Socrates drinking the Hemlock. I thought the law was unjust, but I didn't feel the call to evade it.

Q. He did not think the law was unjust, did he?

A. Yes; he though the decision of the populace in Greece to sentence him to death was unfair.

Q. But he didn't think the law was unfair?

A. Yes; he did.

Q. He thought these five hundred jurors were misguided souls, some of them, didn't he?

A. Yes; but anyway, I don't really know. I have difficulty explaining that, why I do feel that way; but I have not felt at any point that I could try to escape the law or to try to make my eyes, for instance, worse than they are.

Q. Have you ever voted at elections?

A. Yes; oh, surely.

Q. Did you vote for a congressman?

A. Yes.

44 Q. Did you expect him to vote to adopt laws that you wouldn't abide by?

A. Well, no; and the Congressman I voted for didn't get elected, anyway.

Q. Anyhow; why do you prefer the civil courts, since there are two options? Why do you prefer the civil courts rather than the court martial of this army?

A. Well, I don't know. I have the feeling, for one thing—here is the court martial of the army: They gave me four orders, to raise my right hand and to take the oath and to submit to fingerprinting. Of all those orders, they charge me only with violation of the fourth, to submit to fingerprinting. They are afraid to admit the real issue, that I refuse to serve in the army. I think the civil courts are more objective and more fair; that they will convict me of what I am actually guilty of, for refusing to serve.

Q. From the very appearance of the thing, is this an aggregation of this court out here [indicating]?

A. Is what? What do you mean?

Q. These officers here?

A. Are they what?

Q. Are they an aggregation of what this court martial would consist of?



A. I don't know. You will have to ask them.

Q. They don't look as hard-boiled as I feel about the matter.

A. Yes.

45 Q. Maybe it would be better for you to be there than in this court?

A. I think in some ways it would be. I find some of these prisoners over there in the guardhouse—that most of them are in there for desertion or absence without leave; and many of them, although their ideas are not formulated on the matter, feel, I believe—well, some do realize that they object for more or less the same reasons I do, although they are people that it is petty things that have caused them to desert the army. I don't mind. Of course, I do mind a hard sentence, but I want to be convicted for what I am really guilty of.

Q. Of refusing to abide by the law?

A. Refusing to serve in the army; that is right; and not just a petty thing of refusing to be fingerprinted.

The COURT. Go ahead, gentlemen. I have taken up all the time.

Mr. REILLY. It is all right. I think the court has done a very fine job. How many officers were present at the time they administered the oath to you?

A. (By the petitioner.) I think about five were present at the time of the attempt.

By Mr. REILLY:

Q. About five. How large was the room you were in?

A. Oh, a rather small room. It was the room in which—

Q. (Interrupting.) A small room. Can you give us the size?

46 A. It was probably about as large as this dias, or this platform, where I am.

Q. Eight by twelve, or something like that?

A. Yes; twelve by twelve, maybe, and they all stood. I mean I was sitting in a chair like the Judge is here, and they were— This Lieutenant Nemec was standing over there and these other officers around him.

By the COURT:

Q. Wasn't it a little strange they should all stand and allow you to sit?

A. Well, I had refused to stand, you see, and that is what they wanted to get me for—was refusing to obey orders.

Mr. REILLY. You may examine.

Cross examination by Captain BROWNE:

Q. I take it the answer you make as to the use of force is directed to the point of duress? You had that in mind—that you were forced to do something?



A. Well, I wasn't forced. I just sat there. I was prevented from leaving.

Q. Because, regardless of the number of officers in the room, you didn't take the oath, did you?

A. I did not; no.

Q. No violent hand was laid on you?

A. No violent hand was laid on me, but if I had attempted to leave the reservation and turn myself over to the civil authorities, I am sure there would.

47 Q. You did not sign anything?

A. I didn't sign a single thing.

Q. So you weren't forced into that, were you?

A. No; but I was forced to sit there and listen to this oath of induction.

Q. It was unpleasant to you to listen to the oath?

A. Yes; it was. The whole procedure was unpleasant, and I would have gladly left if I had been allowed to.

Q. Aside from being compelled to stay there, you were not forced to do anything at all, were you?

A. No.

Q. Until the time you were sent to the guardhouse?

A. Not until the time I was sent? Yes; I was compelled to stay there, forcibly restrained from leaving.

Q. I say, aside from that?

A. Aside from that; no. They did not make me sign anything.

Q. All right. Now, no one forced you—that is, by direct force of any kind other than the threat of the law itself—to register with the draft board?

A. No.

Q. Did they?

A. No.

Q. No one forced you first to have a hearing with the draft board?

48 A. No; except the force of the law. There is a twenty-year penitentiary sentence for refusing to sign the card. That is quite a force.

Q. I am referring to direct force?

A. No.

Q. No one offered you direct force, forcing you to appeal?

A. No.

Q. No one forced you to come to Fort Leavenworth at the reception center to take the physical examination, directly, did he?

A. No; but I will tell you if I had known what the army was going to try to do, I would never even come up for this physical examination.

Q. I move that be stricken out as not responsive. I say no one did force you?

A. No.

Q. To come?

A. No.

Q. You came voluntarily?

A. "Voluntarily" is hardly the word.

Q. You came voluntarily to the reception center at Fort Leavenworth for the physical examination, subject to the pressure of the law, of course?

A. I wouldn't say it was voluntary. I came.

Q. No one forced you by direct force, though?

49 A. Not by direct force, only the indirect force of a twenty-year prison sentence.

The COURT. Is there a statute to that effect?

Mr. REILLY. No.

A. Somewhere I read that violations of the draft law are punishable with up to twenty years' imprisonment.

Mr. REILLY. No; five years.

A. I thought it was twenty and a ten thousand dollar fine.

Mr. REILLY. Ten thousand dollar fine and five years in prison.

A. Oh, it is only five. I thought it was twenty.

By Capt. BROWNE;

Q. The question is, but no one, by threat of physical violence, I mean direct force—you understand what I mean?

A. No; no one, by threat of physical violence; but I would not say I went voluntarily to this center.

Q. No one physically forced you?

A. No one physically forced me with a club.

Q. What do you mean?

A. Under a gun, club, or anything.

Q. When you first arrived at the reception center on the military reservation there, did anyone force you to stay the first night at the barracks where you slept?

A. Well, no; not exactly. They just herded these fellows like a bunch of cattle around, to go over to this place.

50 Q. After that first night there, did anyone force you to go to breakfast there at the government's expense?

A. No; not by physical force.

Q. You understand, of course, that I am talking about physical threats of force all the way through. You didn't pay anything for the meal or lodging?

A. No.

Q. Next morning you took the physical examination without threat of direct force from anyone?

A. Yes.

Q. Because you were expecting to fail it, weren't you—hoping, I will say?

A. "Hoping" is the word; yes.

Q. Then, to your great surprise, you did not?

A. Not great surprise.

Q. Just say "surprise"?

A. It wasn't surprise. It wasn't really surprise. I had packed all my baggage before I left the University and had written a letter of resignation stating in advance that I had failed, or that I had passed, the physical examination and had been ordered into the army and had refused and therefore would be arrested and imprisoned probably.

Q. After you had passed the physical examination, of course you were advised of that—as you said I think—advised that you were 1-B?

51 A. They said I was in 1-B. 1-B heretofore and even now only a part of the 1-B's are being drafted, so I didn't really know I was in or that they were trying to put me in. I couldn't see because my eyes had been dilated.

Q. I understand, but I am asking you what was told you?

A. Yes.

Q. Then the oath was read to you after some events happened?

A. Yes, sir.

Q. Then after it was read to you, you refused to subscribe to it, didn't you?

A. Yes.

Q. Then you were told you were in the army anyway, isn't that true?

A. That is true.

Q. Up to that time no force of any kind, physical force had been used or threatened towards you, is that true?

A. Yes. No, that is not true.

Q. What physical force had been used or threatened?

A. Well, Lieutenant Nemec had said this: "Now, we know this man intends to turn himself over to the civil authorities. I suggest that we put him under armed guard and prevent him from leaving the reservation."

Q. You had told them you intended to depart the first chance you got?

A. I certainly did.

52 Q. That is the only offer or threat of physical restraint?

A. Well, I was under their guard all the time after that.

Q. That was the only threat?

A. It was a continuous one thereafter.

Q. Wait a minute, until I finish my question. I say up to the time that you were told that you were a soldier, the only

threat of force that was given you was that you should stay there and not leave; is that true?

A. Yes; I just sat there while they were reading.

Q. Yes, sir; with reference to threats. Afterwards you were first put in the holdover?

A. Called by the prisoners in there solitary confinement, and that is what it is. It is a bare cell without a bed in there, roaches on the floor, cold, dark, no other prisoners around.

The COURT. You weren't entirely alone there, were you?

A. Yes, I was; I mean in solitary confinement. Oh, I am sorry. I didn't catch that. Yes; there was company in the form of roaches. That is right.

Q. Then next day you refused to help sweep it out as the other prisoners did; didn't you?

A. No; they ordered me into one of these prison uniforms and I refused to put it on.

Q. You also refused to cooperate?

A. No. I told them I would be perfectly willing to work  
53 around there but I didn't want to give some tangible evidence that the army, since I had become convinced by that time it was a very high-handed organization, might use against me to try to prove I was now in the army, by taking my civilian clothes away from me.

Q. Isn't it true you were put in solitary confinement after you had refused to put on a uniform and to cooperate in the prison?

A. I hadn't refused to cooperate in the prison. I told them I would be glad to help.

Q. The uniform is the one other prisoners wear?

A. That is right.

Q. It is fatigue trousers and a shirt?

A. Yes, and has a big "P" on the back.

The COURT. What is this you have on there?

A. This is the same kind of thing they are wearing. This is supposedly the army thing.

The COURT. Isn't it the regular army uniform?

A. Yes, it is.

The COURT. You call it "this thing."

A. Well, you see I view the army somewhat differently from what the majority of people do.

The COURT. From what ordinary Americans do. You don't claim to be an American, do you?

A. I certainly do, sir, and I am very proud of that fact.

54 The COURT. You are proud of that fact?

A. Yes, sir.

The COURT. And yet you would see this country overrun by the Japs and the Germans and our women mutilated and all that, and you wouldn't raise your hand or your voice against that, and you say you are proud to be an American?

A. That is not the question. You misrepresent it when you state it that way. I am sorry.

The COURT. Proceed.

By Capt. BROWNE:

Q. You have no dependents, have you?

A. No, no actual dependents; no. I have been helping a French-refugee, but she is on her own now.

Q. After being confined in the guardhouse, you had charges served upon, charging you with disobedience of an order to take your fingerprints, is that true?

A. I guess that is called served.

Q. Weren't they read to you? Didn't I read them to you?

A. Yes, you read them to me.

Q. And showed them to you?

A. You showed them to me.

Q. And you read right with me what I had on the charge?

A. Yes.

Captain BROWNE. That is all I have, sir.

The COURT. Any further questions?

55 Redirect examination by Mr. REILLY:

Q. Is there anything else you wish to state that you haven't already stated?

A. Well, the only thing was, that I had made every effort. I was simply flabbergasted when the army authorities succeeded in holding me after this physical examination because every inquiry I have made, and I have made them from the army officers in charge of the state draft offices in Texas, I have made them from professors of law; one of them was a visiting professor of law who was there at Texas and he looked the thing up. Everybody said without any hesitation that you were not in the army until you subscribed to the oath of induction, until you took the oath of induction and taking the physical examination did not put you outside the jurisdiction of the civil courts.

Captain BROWN. Of course, the court will understand our motion to strike that as pure hearsay and argument.

A. Then I had read these similar cases, as I said in this conscientious objector paper, and when I came over here to Kansas City the day before I was to go, before I came over here to Leavenworth, I phoned Mr. Lindsay. I phoned the FBI and



asked them where to turn myself in to them if I should pass this physical examination, and I phoned—before I phoned the  
 56 FBI, I phoned, I believe I phoned three offices. I believe it was the District Attorney and the United States Marshal and the FBI office. I talked to a Mr. Phelps. Is there a Mr. Phelps?

The COURT. He is in the Missouri office, Western District of Missouri.

A. I spoke to him. Is he an attorney?

The COURT. He is Assistant District Attorney for the Western District of Missouri.

A. Oh, yes.

The COURT. Did he tell you you could evade service in the army?

A. No; you see—no. He told me—I just called them and asked them whom I should turn myself over to.

The COURT. Oh, yes.

A. (Continuing.) After I had passed this physical and received the order to take the oath, whom I should turn myself over to and report that I was refusing to take the oath. I believe he was the one that told me to phone the FBI.

The COURT. You were seeking protection from the army?

A. That is right. Yes; I was; yes. That is right. I was not seeking to be protected by the army, but to be protected from the army.

Mr. REILLY. That is all I have.

Re-cross-examination by Captain BROWNE:

57 Q. I have this question, in view of his statement about his treatment. Lieutenant Edwards, who was here just a moment ago, standing with me, interviewed you two times before the charges were served on you, didn't he?

A. I forget whether it was once or two times. I believe it was twice; yes.

Q. He talked with you at length?

A. Yes.

Q. And you exchanged philosophy?

A. Yes; I must say that I found you and Lieutenant Edwards quite decent people.

Q. In spite of the army. Thank you.

A. In spite of the army. You are just obeying orders and doing what you think is your duty.

Q. Then, after you had talked to Lieutenant Edwards two times and to me once, you were brought in and had considerable of a conversation with the General in his office, didn't you?

A. Yes; and I thought the General himself was a very decent man. He told me his brother had been a conscientious objector in the World War.

Q. But he said he had gotten over it since, didn't he?

A. Well, he said—I don't know whether he worded it that way.

Q. Maybe I am misquoting his exact words.

A. He said his brother was now in the army—had changed his mind.

Q. Your counsel was there at that time, wasn't he?

58 A. Yes; that is true.

Mr. REILLY. Just a minute, to keep the record straight, please. I wasn't present when he served charges on you?

A. No; I didn't mean that.

Mr. REILLY. And I wasn't present at any time when you were interviewed by anybody else but the General?

A. That is right.

Captain BROWNE. He was present at the reception center part of the time, wasn't he?

A. He came just after they had read this order. He came after—to get me to sign this petition for a writ of habeas corpus.

Mr. REILLY. You had not seen me prior to the time they read the oath to you?

A. No; I had not.

Mr. REILLY. These five officers were present in the room?

A. That is right.

Mr. REILLY. Yet they knew that you had called for an attorney?

A. That is right. You asked me over the phone if they couldn't stay this twenty-four hours or something until a writ could be drawn, and they specifically refused to do that.

Mr. REILLY. That is all.

Further re-cross-examination by Captain BROWNE:

59 Q. The procedure that Lieutenant Edwards was trying to effect with you was to see if it could be worked out so you could go into a medical unit? Didn't he mention that first? Anything that would more or less solve the problem?

A. Yes; yes; I got the impression, as I think you told me: "Well, if you just go in, why, you may be Captain Billings before long." Well, they could make me anything, maybe General, and I still wouldn't go in.

Q. You don't say that I offered you a commission in the army?

A. No; I am not; but you said, "Maybe some day we may be laughing about this, and I will be calling you—" didn't you say

that, or something to that effect, "You might be a Captain in the army!"

Q. That is your recollection of your treatment?

A. By you and by him, but not by these jailors.

Q. Oh, no. You had visitors Sunday—received visitors?

A. I received a visitor Sunday.

Q. I mean you were accorded the right to receive them?

A. Yes; this particular one.

Q. At the regular visiting hour, wasn't it, sir?

A. I presume it was; yes.

The COURT. Who?

A. Joe Vorhees, of this city.

The COURT. What is his business?

A. He is a stepuncle of mine. My stepmother, who is now dead, was his sister.

The COURT. Is he a conscientious objector?

A. Oh, no; and neither are any of the others in my family. Oh, no. They don't agree with me, and neither do any of the other members of my family except, I think, one of my sisters-in-law.

The COURT. Any further questions?

Captain BROWNE. I have none.

Further redirect examination by Mr. REILLY:

Q. Joe Vorhees served as a first lieutenant overseas with the AEF, didn't he?

A. He was a volunteer, too. He spent all his time trying to get me to see the light, trying to make me believe it was my duty.

The COURT. To be really a true American citizen.

A. Well, to go into the army, which he thinks is serving America, and I don't think the army is serving the best interests of this country.

Mr. REILLY. That is all I have.

Captain BROWNE. That is all I have.

The COURT. You gentlemen wish to submit any authorities?

*Colloquy between Court and Counsel*

Mr. REILLY. Your Honor, I have some authorities here. We do not take the Federal Supplement. There is evidently no case, as far as I have been able to find, touching on this point, which has come up to the Circuit Court of Appeals nor up to the Supreme Court. There is a case in New Jersey, 38 Federal Supplement 183, that might come close to this question. It says in there where a selective service draftee was refused reclassification by the local board because of change in status and was transferred to a training camp despite his

attempted appeal from that action, and refused to take the oath of induction, his action did not constitute a waiver of civil relief, and he could seek relief by habeas corpus as against intent that he should have first declined induction and subjected himself to the charge of desertion by military authorities before he could test his intent in a habeas corpus proceeding. That was decided in 1941 in the District Court of New Jersey.

**Captain BROWNE.** Of course, our contention is that—and the law, too, is very clear about it—this last law, the 1940 law, your Honor, does not mention when induction begins and when it does not. It does not change the law under which the army has been exercising military jurisdiction for years. Nowhere is that changed. Men are being sentenced right now for life and I am sure to corporal punishment under this very law. It has not been changed, under the Articles of War.

**Mr. REILLY.** We can concede that.

**Captain BROWNE.** You concede that is the law now?

**Mr. REILLY.** We concede they are the law now.

62 **Captain BROWNE.** I don't say it is the law applicable to this man.

**Mr. REILLY.** It follows on, "all in like conditions."

**Captain BROWNE.** Do you concede that the Articles of War are now the law of the land? They have not been repealed?

**Mr. REILLY.** I concede they are the law of the land all right, applying to all those in military service and those civilians who are outside the jurisdiction of the United States, who are working for military projects, military posts or camps of that character.

**Captain BROWNE.** Do you concede they have not been repealed?

**Mr. REILLY.** It is evident they have not been repealed.

**Captain BROWNE.** Then here is what the law says. It is still the law if it has not been repealed. It says: "All other persons lawfully called, drafted, or ordered into"—and he says he was ordered into—"the said service from the dates they are required by the terms of the call." His date was August 12th, he said [continuing] "are subject to these articles." That is the law. This Act has not in any way changed it, but it has said this—it has said the president is authorized, Section 12 (1) "to prescribe the necessary rules and regulations to carry out the provisions of this Act." He has done so. He has prescribed training or mobilization regulations.

63 **The Court.** Let me make this suggestion: that I will not decide this matter at this moment, but you gentlemen collect these authorities and these paragraphs of the law that you think apply, and give them to me at the earliest possible moment.

**Captain BROWNE.** I do want to furnish this citation, regulation called MR 1-7, which says, and I think, though I am not sure.

that that is taken judicial notice of, I think possibly out of an abundance of caution I should offer it in evidence.

The COURT. Very well, you may do so.

Captain BROWNE. It won't do any harm.

Mr. REILLY. I don't think the army regulations are the law.

The COURT. It may be received here and I will determine whether it shall have consideration.

Captain BROWNE. I will offer it.

Mr. REILLY. The army has gone ahead and preferred charges. I wouldn't want to be in a position, if it took a little time on this, that it is a moot question. If this petitioner were to be tried, I would like to have a little understanding here.

Captain BROWNE. No, he won't be tried while it is under consideration by this court. I think that goes without saying.

Mr. REILLY. I wouldn't want any injunction suits,

Captain BROWNE. It won't be necessary.

64 The COURT. This petitioner expects to go to prison anyway. What difference does it make which court decides it? If that is what he has been looking for, what difference does it make whether it is the army or the court.

The PETITIONER. May I interrupt, sir?

Mr. REILLY. I might say as far as I get it from what he said, that in his conscientious objection to all things military, he understands he has to go to prison, but he wants to go to prison as a civilian regardless of what the punishment is. He wants to take it as a citizen and not as a military prisoner.

The COURT. All right.

Mr. REILLY. I think everything Captain Browne here has said is absolutely applicable to the law, the Selective Service law of 1917, but it was changed by the 1940 law. I will get those authorities.

Captain BROWNE. May the record show we move for judgment on the pleadings?

The COURT. Yes, it may so show. I really think you are entitled to it, but I will go into the question thoroughly.

Captain BROWNE. The first brief will come from the petitioner?

Mr. REILLY. That is right.

Captain BROWNE. We won't need but two or three days to answer it.

65 The COURT. Yes, furnish copies to the other side.

Mr. REILLY. I am in this position, your Honor, to get access to the Federal Supplement, I will have to make a trip to Topeka.

Captain BROWNE. We have it.

The COURT. Have it within three days.



The PETITIONER. Pardon me. May I make one more statement just for the sake of the record, and that is that from the very first the army officials with whom I have come in contact have wished to keep the facts of this thing away from the public.

The COURT. Away from the public?

The PETITIONER. Away from the public, which I believe is not right in a country that once was a democracy.

The COURT. I observe a couple of newspaper men around here this afternoon. Maybe they will help you out.

The PETITIONER. I am glad they are here. I wasn't aware of that fact, but even General Truesdale said, "I don't want this to get into the press." I think they don't want it to get into the press because they are ashamed of the high-handed manner in which they have conducted themselves. For my part, I am not ashamed. I am proud of going to prison for standing up for what I believe in.

The COURT. You will be proud to turn this country  
66 over to the Germans.

The PETITIONER. I would not, sir.

The COURT. Let them annihilate and rape our women and do all other kinds of things?

The PETITIONER. Sir, that is an unjust accusation.

The COURT. Well, your attitude gives that impression, sorry as it may be.

The PETITIONER. I am very sorry that it does so, because it is an erroneous impression.

The COURT. I am sorry, too, that an able-bodied young man like you, would be so obtuse in your mind or such a physical coward that you would not do anything in this great emergency to help your country.

The PETITIONER. Sir, I am willing to do anything to help my country, but I don't think it helps my country to promote this war.

The COURT. The country is the one to decide that question and the country has decided it. You don't think the majority should control. No, that will be all, gentlemen. I will consider your authorities, and pass on them.

Captain BROWNE. Since the prisoner is apparently speaking for the record, I would like to leave in the record the statement that a representative of the Kansas City Star is here and the Leaven-

67 worth Times, and that our publicity officer is here, and that of course any publicity that the papers want to give it, they are fully entitled to. and I would like to ask the petitioner this one question, if I may?

The COURT. You may.

Captain BROWNE. Isn't it true that General Truesdale told you that for your benefit, he would rather that there weren't any publicity?

The PETITIONER. The General said for my benefit, but I am not convinced it was for my benefit.

The COURT. Then you misstated him a while ago.

The PETITIONER. No, sir; I did not. He said, "I don't want this to get into the press," and he said, "You might object to the publicity."

The COURT. For your benefit.

The PETITIONER. No, I said, I wanted in the prison. He said, "This is partly for your protection. You might need protection against mob violence."

68 The COURT. All right, gentlemen. Submit your briefs.  
[Reporter's certificate to foregoing transcript omitted in printing.]

69 In United States District Court

[Title omitted.]

*Memorandum Opinion*

Filed Sept. 11, 1942

HOPKINS, District Judge:

This is a habeas corpus case. Petitioner contends that he is unlawfully restrained of his liberty and held for army service by Maj. Gen. Karl Truesdell United States Army, Leavenworth, Kansas; that petitioner is not a member of the armed forces of the United States, is not subject to military jurisdiction, and that he should be brought before the civil courts for any alleged unlawful act committed by him. In response the Army sets up that petitioner was duly inducted into the Army on or about August 13, 1942, for the duration of the war, and that formal charges had been preferred against petitioner for wilful disobedience of a lawful command of his superior under Article of War No. 64. In reply to this, petitioner states that he is a conscientious objector and urged that claim before his local draft board, and being overruled appealed to the state board, and being denied by the state board, he then presented himself at the reception center, Fort Leavenworth, Kansas, where he was given a physical examination and notified of his acceptance for service in the Army, and thereafter was commanded to stand and take an oath of induction, which he refused, informing the officers that he was a conscientious objector.

The writ was ordered to issue. Petitioner was produced in court and testified at some length.

From petitioner's own testimony it appears that he reported to the reception center at Leavenworth in obedience to orders of

his local draft board; that upon reporting he was assigned to barracks, slept there that night, and on the following morning a soldier directed him to the army mess hall where he had his breakfast and proceeded with various tests and examinations, including physical examination. The next step involved finger printing and petitioner balked, saying that if finger printing "involves induction into the army I shall refuse to be finger printed," and speaking to officers in the induction office petitioner explained his intention to refuse to serve in the army and asked to be turned over to the civil authorities. The officers explained that petitioner was already in the army and ordered him to stand and take the oath. Petitioner refused to stand and refused to raise his hand, and after the oath was read to him he said, "I do not. I refuse to take this oath." Petitioner was then ordered to the guard house and this habeas corpus proceeding followed.

We have the question: When is induction actually accomplished? In the movement from civilian to soldier, at what point does the authority of the military attach? Can a draftee, examined and found acceptable and who has been notified of his acceptance and told that he is now in the army, stay beyond the reach of military orders by refusing to take and accept an oath? Has this government become so impotent that in a time of great emergency and danger army service must depend upon acceptance by the citizen? If so, petitioner should be ordered released, but if not, the writ should be denied. The question is one of jurisdiction; jurisdiction of the Army over the petitioner (*Sanford v. Robbins*, 115 Fed. 2d 435, cert. denied 312 U. S. 697).

Before giving specific consideration to the Selective Service Act and the rules and regulations made thereunder, it may be of interest to review some of the facts developed by petitioner's testimony.

Petitioner is a single man with no dependents. He is thirty-one years of age, six feet tall and weighs 165 pounds. To all appearances he is a well-developed, able-bodied man. His preliminary education was in this state. He was graduated from the University of Kansas, high in his class; was elected to Phi Beta Kappa. He later attended the University of Paris for two years. Following this he served three years in the diplomatic service in the American Embassy at Moscow. Spent some time in China and Japan. Later studied at Harvard University where he procured his Master's Degree. Is working for a Doctor's Degree. During the past summer he has taught in the University of Texas.

It appears that instead of being a conscientious objector under the regulations and the law, petitioner is an agnostic, as found

by the draft board. He likens himself to Socrates and refuses to conform to or abide by any law of the United States that does not suit his whim. While claiming to be a citizen of the United States ("and proud of it"), he says he believes, with some modifications, in the doctrine of Mohandas Gandhi. He says that if the Germans and the Japanese came to take over our country, our people and institutions, he would refuse to resist but would refuse to cooperate with them. He discounts 71 claims of German and Japanese atrocities; says they are greatly exaggerated and asserts that many of the alleged German atrocities of the last war did not in fact take place.

It is helpful to review some of his testimony in considering the question presented:

"I have friends who are professors of law there at the University of Texas also, and they were rather interested in my case and they looked up the law and they told me \* \* \*

Q. (Interrupting.) "When did they do that?"

A. "Oh, this was last January."

Q. "You were sort of getting ready for this business?"

A. "Oh, yes; I have expected to go to prison if I passed the physical examination. I expected to go to prison anyway. I had made up my mind I would never serve in the army and I would take the consequences, whatever they might be, so I had inquired from everybody who I thought might know about the draft law. I went to the state draft headquarters at Austin, Texas. The draft headquarters are in the same city as the University and the state officials of the draft there, who are army men, informed me that I was not in the army until or unless I took the oath of induction and took the physical examination."

Q. "You know some of these officers might be mistaken as to what the law is."

A. "Yes; they might be, but I take also a conscientious objector newspaper. \* \* \*

A. "And in this magazine they reported a number of cases. They record cases. That is mainly what the magazine is for, to inform other conscientious objectors."

Q. "Well, you have been studying and working on this question then for a good many months, I take it?"

A. "Oh, yes; after all, it involved my whole life; my future and everything."

Q. "Did you tell some folks that you were going to take this physical examination and you thought likely you wouldn't pass, but if you did, then you were going to refuse to serve?"

A. "Oh, yes; I told many people that \* \* \*

Q. "Yes. Why do you seek to get into the civil courts? If you don't believe in everybody obeying the laws and the rules, why do you wish to submit your matter to any courts?"

72 A. "Well, I don't know. It is sort of like Socrates drinking the hemlock. I thought the law was unjust, but I didn't feel the call to evade it."

Q. "Have you ever voted at elections?"

A. "Yes; oh, surely."

Q. "Did you vote for a congressman?"

A. "Yes."

Q. "Did you expect him to vote to adopt laws that you wouldn't abide by?"

A. "Well, no."

Q. "Anyhow, why do you prefer the civil courts since there are two options? Why do you prefer the civil courts rather than the court martial of this army?"

A. "Well, I don't know. \* \* \* I think the civil courts are more objective and more fair; that they will convict me of what I am actually guilty of, for refusing to serve \* \* \* I was simply flabbergasted when the army authorities succeeded in holding me after this physical examination because every inquiry I have made, and I have made them from the army officers in charge of the state draft offices in Texas, I have made them from professors of law; and one of them was a visiting professor of law who was there at Texas and he looked the thing up. Everybody said without any hesitation that you were not in the army until you subscribed to the oath of induction, until you took the oath of induction, and taking the physical examination did not put you outside the jurisdiction of the civil courts."

The Court. "You were seeking protection from the army?"

A. "That is right. Yes, I was; yes. That is right. I was not seeking to be protected by the army, but to be protected from the army."

Referring to the attempt of a friend to change him:

A. "He was a volunteer, too. He spent all his time trying to get me to see the light; trying to make me believe it was my duty."

The Court. "To be really a true American Citizen?"

A. "Well, to go into the army, which he thinks is serving America, but I don't think the army is serving the best interests of this country \* \* \*

Speaking of his refusal to put on a uniform, petitioner testified:

The Court. "What is this you have on?"



73 A. "This is the same kind of thing they are wearing. This is supposedly the army thing."

The Court. "Isn't it the regular army uniform?"

A. "Yes, it is."

The Court. "You call it, 'this thing.'"

A. "Well, you see I view the army somewhat differently from what the majority of people do."

The Court. "From what ordinary Americans do. You don't claim to be an American, do you?"

A. "I certainly do, sir; and I am very proud of that fact."

Petitioner was quick to seek the court and the aid afforded by its processes. He draws upon rights accorded to him and all other alike, and without prejudice by reason of the somewhat ambiguous philosophy disclosed in his testimony.

The history of the writ of habeas corpus is lost in antiquity. But it was in use before Magna Charta and exists today as part of the fundamental law of the land. It is a writ which cannot be abrogated or its efficiency curtailed by legislative action. Its position is made secure by the provisions of Article I, Section 9 of the Constitution.

Judge Murrah of the Tenth Circuit Court of Appeals has said: "The writ of habeas corpus is a shield that guards and protects the constitutional liberties of the American citizen. Through it we inquire to see whether fundamental rights have been violated. Its function or use should not be construed or employed so narrowly as to defeat the salutary purpose it serves in our system of government" (Lunsford v. Hudspeth, 126 Fed. 2d. 653).

Habeas corpus in character is that of a civil proceeding. It seeks the enforcement of civil rights. Resort to the writ is had not to inquire into the criminal act of which complaint is made, but into the right of liberty, notwithstanding the act, and the immediate purpose to be served is relief from illegal restraint.

The ultimate inquiry is the jurisdiction of the holding authority (here the Army) (Collins v. Johnston, 237 U. S. 502; Frank v. Mangum, 237 U. S. 309).

The pertinent inquiry in a habeas corpus proceeding is to determine the jurisdiction of the court (in this instance the Army), pronouncing the sentence, or procedure, and giving the judgment. If the court (or the Army), has jurisdiction, any irregularities in procedure or decision are matters for appeal and cannot be reviewed in habeas corpus.

74 The Selective Service Act of 1940, Section 11 (50 U. S. C. A. 311), carries a provision that:

"No person shall be tried by any military or naval court martial in any case arising under this act unless such person has been actually inducted for the training and service prescribed under

this act or unless he is subject to trial by court martial under laws in force prior to the enactment of this act."

This provision in the new Act is in absolute harmony with the earlier decisions of the courts interpreting that part of the Second Article of War (10 U. S. C. A. 1473) that persons subject to military law shall include all persons "lawfully called, drafted, ordered into, or to duty, or for training in the said service, from the dates they are required by the terms of the call, draft or order to obey the same." The decisions under this provision held that until actually inducted the right of the party are determined by the civil law (*Ex Parte Henderson*, 11 Fed. Cas. No. 6349; *Ex Parte Goldstein*, 268 Fed. 431; *U. S. v. McIntyre*, 4 Fed. 2d. 823; *Ver Mehren v. Sirmyer*, 36 Fed. 2d. 876).

Induction—When and how accomplished, is the question presented. Petitioner contends that for one to be finally inducted he must not only be acceptable and so notified, but he must agree to accept service; that he must take the oath; that law or regulation to the contrary is unconstitutional; that failure to take the oath of allegiance continues in effect the police power of the civil authorities and the force that restrains the cloak of military authority descending upon the selectee.

The Selective Training and Service Act of 1940 (50 U. S. C. A. 301, et seq.), and the Service Extension Act of 1941 (50 U. S. C. A. 351, et seq.), provides for registration of persons liable for training and service, exemption, deferments, terms, etc. But these Acts do not set out the procedure for induction. There was delegated to the President the authority "to prescribe the necessary rules and regulations to carry out" the provisions of the Act.

Rules and regulations now in effect and in effect at the time petitioner presented himself at the Leavenworth reception center carry no provision for the giving of an oath as an incident to induction. The pertinent regulations read:

633.1 "Immediately upon determining which men are to report for induction, the local board shall prepare for each man an Order to Report for Induction (Form 150), in duplicate. The local board shall mail the original to the registrant and shall file the copy in his Cover Sheet (Form 53)."

633.2 "After selecting the registrants who are to fill the call, the local board shall designate one selected man to be the leader of the group and one or more to be assistant leaders."

633.2 "(c) Leaders and assistant leaders shall have such authority as is necessary to deliver the group to the induction station."

633.3 "Before the time set for selected men to report for delivery to the induction station, the local board shall prepare a Delivery List (Form 151), in triplicate."

633.4 "Before the time set for selected men to report for delivery to the induction station, the local board, unless otherwise directed, shall prepare Government Requests for Transportation (Standard Form No. 1030) and Government Request for Meals or Lodgings for Civilian Registrants (Form 256)."

633.6 "PROCEDURE BEFORE DELIVERY.—(a) At the time and place designated for the selected men to report for delivery, the local board shall:

- (1) Call the roll of selected men.
- (2) Read and issue the appointment of the leader and assistant leaders.
- (3) Turn over to the leader the transportation request or tickets, the meal and lodging requests, and the records for the induction station.
- (4) Notify the leader of arrangements that have been made at the induction station for the reception of the selected men.
- (5) Specifically order the selected men to obey the leader and assistant leaders.
- (6) Specifically order the selected men to report to the induction station."

633.8 "In the manner and to the extent prescribed by regulations of the land or naval forces, the commanding officer of the induction station is required to have the selected men met at the railroad station or bus terminal, transported to the induction station, and provided with food and lodging after their arrival and pending their induction or rejection."

633.9. "At the induction station, the selected men found acceptable will be inducted into the land or naval forces."

Pertinent also is Regulation 601.8, which defines induction station as any camp, post, etc., where selected men are received by the military authorities and if found acceptable are inducted into military service.

This court takes judicial notice that there exists an induction station on the Fort Leavenworth Military Reservation where this petitioner was received and found acceptable.

As to the regulations on induction (now Section 633.9 but formerly Par. 429) it is important to note that the earlier regulation, Par. 429, contained the provision that:

76 "After examination at the induction station, the selected men found acceptable will be inducted into the land and naval forces. An officer of the Army, Navy, or Marine Corps will administer a prescribed oath to each of the men. He will then inform them that they are members of the land and naval forces, and will explain their obligations and privileges."

There can be no question but that petitioner is subject to the military law. The question is not close enough even to be debatable. The amendment of the regulation to eliminate the provision for the administration of an oath undoubtedly was done to avoid question being raised and to avoid waste of army time and effort in resisting such improvident proceedings as the one here.

I would be of like opinion if Paragraph 429 of the earlier regulation were still in effect. After a draftee has reported to a reception center and has been subjected to his physical and other examinations, has passed said examination and has been notified of his acceptance, the giving of an oath and admonition that you now are in the Army, constitute mere formality. A desirable step, perhaps; but merely formal, none the less. The whole statutory procedure outlined in the Act and the Regulations thereunder culminating in petitioner's examination and notice of acceptance operated as Induction.

Induction is completed upon acceptance by the government and irrespective of the desires, acts, and mental attitudes of the party affected. Upon acceptance by the government, induction occurs by operation of law. It is something over which the party affected, petitioner in this case, has no control. It is not the acceptance by him of the oath, but the acceptance by the government of him as a soldier.

There is a point of difference in this respect as between a party brought into the service by operation of the draft act, and one who volunteers his services. As to the latter, Article of War 109, requires that at the time of his enlistment every soldier shall take a prescribed oath. And see *Franke v. Murray*, 248 Fed. 865.

It should be borne in mind in this case that petitioner's actions as disclosed by his testimony are the result of long deliberation, consultation and study, and careful calculation, and that he has in fact fully complied with the requirements of the Selective Training and Service Act. There may be some question as to whether he has committed an act for which he can be prosecuted in the civil courts, and an order from this court releasing him from the military authority might have the anomalous result that petitioner would walk away scot free of both the military and civil authorities.

In considering matters of this kind we must not overlook the fact that our country is at war; that its very life is at stake, and that soldiers are necessary. If half the young men of our country were disposed, as this individual, we would indeed be easy prey for the powers that have set out to enslave humanity and destroy freedom everywhere. He appears to be a perfect example of

what any ordinary, red-blooded American would dub "an over-educated, egotistical, scholastic slacker."

The Selective Service Act, under which the petitioner is held by the Army, is based on the principle that every citizen owes it as a duty to defend this nation. As said in *United States v. Dewey*, 37 Fed. Supp. 449:

"Under its terms, the burdens of military service will be borne equally by all classes regardless of economic means. We should remember that in order to have the privileges and benefits of citizenship in this country, we each must assume some burdens and discomforts. We should examine our own moral fibre and character and above all, do our duty. The times make it imperative that every one of us should realize that he owes everything he has, his life, his property, and everything else to the cause of preserving the liberties we cherish. So far as is necessary, our government has the right to call upon us to make that sacrifice \* \* \*"

"Every intelligent person knows that the power to make such a decision is one of the most essential, vital and momentous of all the powers of government. We cannot maintain our independence or protect our citizens against oppression or continue to be free, without such power being delegated to some authority, and one of the chief duties of citizenship is a time of great emergency like this to recognize such authority."

78 The spirit of the petitioner is one of rebellion against the laws of the United States, against his government. The effect of his action and those like him is to hinder the war effort the government deems necessary in this distressing emergency. If half the young men should decide to violate some law or refuse to abide by some rule of law of which they disapprove, we would have anarchy. The purpose, and effect of such an attitude would be so plain that it would be impossible not to conclude that such citizens are at heart traitors to their country.

"When the Axis powers did actually apply their principles of action to other peaceful nations by invasion, they violated every solemn covenant they had made to observe the law and neutrality established for the protection of peaceful states. They ruthlessly sent their armed forces to do pillage and destruction to their peaceful neighbors. They committed wholesale murder of defenseless old men, women and children, without warning and in contempt of every law and the dictates of humanity". (*U. S. v. Dewey*, supra).

In the face of all these atrocities, this petitioner is one of the very few willing to violate the laws of his country and indirectly at least give aid and comfort to these world assassins.



In this country we have a natural abhorrence of compulsion. We like to believe that when danger threatens the country every individual citizen will come forward immediately and voluntarily do his duty. Not so with this petitioner.

It is a matter of common knowledge that during past generations this country has shown great sympathy to Japan and the Japanese people. On occasions we have been more than generous when disaster has come to them.

After the attack upon Pearl Harbor, which resulted in the murder of more than three thousand of our finest young men, Secretary of State Hull stated in substance, that this attack upon the United States was treacherous and utterly unprovoked; that the Japanese professions of desire for peace (at the very moment of the attack), were "infamous, false, and fraudulent."

Notwithstanding all this, the petitioner says that Japan was justified (partly) in such treacherous attack.

79 It is difficult to understand how such apparent disloyalty could abide in the soul of any human being; a disloyalty as foul as treason itself.

He now comes petitioning the court for relief from the responsibility of performing the smallest duty to the country that has, according to his own testimony, showered upon him its blessings, and bounty.

Might it not be said that were he given his just deserts, he would be consigned to the German and Japanese murderers, where common, decent, human actions and sympathy abide not?

The government through its regularly constituted channels has classified each man of soldier age according to his ability. In this period of storm and stress each one of us should classify himself in a questionnaire something like the following:

Am I an American citizen?

Do I realize or comprehend what it means to be a citizen of this country?

Do I realize the bountiful blessings that I here enjoy? The blessings of liberty and freedom?

Have I done my full share in the great struggle to preserve in my country the blessings of liberty and to resist everywhere the atrocious will of the barbarian dictators who would enslave the world?

Have I cooperated in every way in carrying on the war effort?

Have I done everything within my power, and willingly, to promote production of the weapons of war, or is it possible that I have been a profiteering parasite? a slacker? a drone? or ever a striker?

Have I actually given the enemies of my country cause to rejoice by impeding our war effort by aiding or abetting the stoppage of work, or going on strike?

Every person and every organization in our nation should be cooperating in the war effort. If doubt existed whether the Army's interpretation was correct of any provision of the selective service act, or of the regulations thereunder, that doubt should be resolved in favor of the Army's view. But I think there is no doubt. The United States Army has jurisdiction of this petitioner.

I am of the opinion the writ should be denied; the petition dismissed, and an appropriate order may accordingly be submitted.

[File endorsement omitted.]

80

In United States District Court

[Title omitted.]

*Order discharging writ of habeas corpus*

Filed Sept. 11, 1942

Now on this 18th day of August 1942, this matter comes on for hearing before the United States District Court at Leavenworth, Kansas, on the Writ of Habeas Corpus issued herein and the Response of the Respondent, Major General Karl Truesdell, United States Army, Leavenworth, Kansas. The petitioner being represented by his counsel, W. D. Reilly, and being present in person; and the respondent being represented by Allan R. Browne, Captain, Judge Advocate General's Department, United States Army, and by Lester Luther, Assistant United States Attorney for the District of Kansas.

The petitioner, after being duly sworn, testified in his own behalf, and rested; and the respondent offered his testimony and rested.

And thereupon, after having heard the argument of counsel, the Court announced that the above-entitled cause would be taken under advisement and requested the submission of written briefs by counsel for the petitioner and the respondent.

And now on this 11th day of September 1942, this cause comes on for the decision of the Court.

The Court, having heard the evidence; the argument of counsel, and having fully considered the written briefs filed herein by counsel for the petitioner and by respondent, finds:

*Findings of fact*

1. That the petitioner, Arthur Goodwyn Billings, is a male citizen of the United States, of the age of thirty-one years; that he registered under the Selective Training and Service Act of 1940 on the 16th day of October 1940, with Local Board No. 1 for Ottawa County, Minneapolis, Kansas; that he was finally classified by the said Local Board and was put in Class 1-A; that Order to Report for Induction (DSS Form 150) was mailed to the petitioner, directing him to report at Minneapolis,

81. Kansas, on August 12, 1942, at 10:45 a. m.; that in response to a telephone conversation with the Clerk of the Local Board, he joined the Minneapolis selectees at Victory Junction, Kansas, and continued on with them to Fort Leavenworth, in compliance with the Order to Report for Induction; that he was met at the bus stop by a soldier who directed him to go and find a bunk; that he was furnished his breakfast at an Army Mess Hall, and reported at the Induction Center for a physical examination, and after the examination was completed, he was informed that he had been accepted and that he was then in the Army; thereupon, the petitioner was informed it would be necessary that he be finger-printed, and he replied that if finger-printing "involves induction into the Army, I shall refuse to be finger-printed"; that the petitioner advised the officers he was refusing to serve in the Army and asked to be turned over to the civil authorities. The officers explained that the petitioner was already in the Army, and ordered him to stand and take the oath. Petitioner refused to stand, refused to raise his hand, and after the oath was read to him, he said, "I do not. I refuse to take this oath." Petitioner was later ordered to the guardhouse.

2. That all the proceedings of the Selective Service Board leading up to the delivery of the petitioner to the induction center at Fort Leavenworth were had and performed in due form of law and in accordance with the Selective Training and Service Act of 1940, as amended, and the Rules and Regulations promulgated thereunder.

3. That the petitioner was duly and lawfully inducted into the United States Army, and on August 13, 1942, was legally and lawfully in the custody and control of the respondent.

*Conclusions of law*

1. That the petition, together with the writ of habeas corpus, and the return thereto, and the evidence adduced, clearly show that the writ should be discharged.

2. That the petitioner was regularly and lawfully inducted into the United States Army on or about August 13, 1942, and that formal charges had been preferred against petitioner for wilful disobedience of a lawful command of his superior officer under Article of War No. 64. That the petitioner is in the legal, lawful custody and control of the respondent.

It is, therefore, now ordered, adjudged, and decreed that the Writ of Habeas Corpus issued herein be and the same  
82 hereby is discharged, and the petitioner is remanded to the custody of the respondent.

The petitioner is allowed his exceptions.

It is so ordered.

RICHARD J. HOPKINS,  
Richard J. Hopkins, *Judge.*

Approved:

ALLAN R. BROWNE,  
Allan R. Browne,

*Captain, JAGD,  
Leavenworth, Kansas.*

LESTER LUTHER,  
Lester Luther,  
*Assistant U. S. Attorney,  
District of Kansas,  
Federal Building, Topeka, Kansas,  
Attorneys for Respondent.*

W. D. REILLY,  
*Leavenworth, Kansas,  
Attorney for Petitioner.*

[File endorsement omitted]

83 In United States District Court

[Title omitted]

*Notice of appeal*

Filed Sept. 16, 1942

Notice is hereby given that Arthur Goodwyn Billings, applicant above named, hereby appeals to the Circuit Court of Appeals for the Tenth Circuit from the final judgment entered in this action on September 10, 1942.

WM. D. REILLY,  
*Attorney for Arthur Goodwyn Billings,  
Times Building, Leavenworth, Kansas.*

[File endorsement omitted]

## In United States District Court

*Note re filing of cost bond*

Cost bond on appeal, in the sum of Two Hundred Fifty Dollars (\$250.00), signed by Arthur G. Billings, as principal, and Margaret E. Felton, as surety, was filed in the District Court October 24, 1942.

84 In United States District Court

*Order enlarging time to file and docket appeal*

Filed Oct. 26, 1942

Now, on this 26th day of October 1942, for good cause shown, it is ordered that time for filing and docketing appeal in above entitled case be and is hereby enlarged to and including November 16, 1942.

RICHARD J. HOPKINS, Judge.

[File endorsement omitted]

85 In United States District Court

*Order enlarging time to file and docket appeal*

Filed Nov. 14, 1942

Now, on this 14th day of November 1942 for good cause shown, It is ordered that time for filing and docketing appeal in above entitled case be and is hereby enlarged to and including December 15, 1942.

RICHARD J. HOPKINS, Judge.

[File endorsement omitted.]

86 [Clerk's certificate to foregoing transcript omitted in printing.]

87 In United States Circuit Court of Appeals, Tenth Circuit.

*Order of submission :*

Second Day, March Term, Tuesday, March 16th, A. D. 1943.  
Before Honorable Orie L. Phillips, Honorable Alfred P. Murrah,  
and Honorable Robert L. Williams, Circuit Judges.

This cause came on to be heard and was argued by counsel, Lee Bond, Esquire, appearing for appellant, Lester Luther, Esquire,  
and Allan R. Browne, Esquire, appearing for appellee.

Thereupon this cause was submitted to the court.



## In United States Circuit Court of Appeals

ARTHUR GOODWYN BILLINGS, APPELLANT

v.

KARL TRUESDELL, MAJOR GENERAL, UNITED STATES ARMY, APPELLEE

Appeal from the District Court of the United States for the  
District of Kansas

Lee Bond for appellant.

Lester R. Luther, Asst. U. S. Atty., and Allan R. Browne, Major, JAGD, Staff Judge Advocate (George H. West, U. S. Atty., Eugene W. Davis, Asst. U. S. Atty., and Bert E. Church, Captain, JAGD, Litigation Officer, Seventh Service Command, were with them on the brief), for appellee.

Before PHILLIPS, MURRAH, and WILLIAMS, Circuit Judges.

*Opinion*

April 30, 1943

PHILLIPS, Circuit Judge, delivered the opinion of the court.

Arthur Goodwyn Billings, hereinafter called the petitioner, filed his application for a writ of habeas corpus directed to  
 89 Major General Karl Truesdell, Commanding Officer, Reception Center, United States Army, Fort Leavenworth, Kansas, in whose custody petitioner was detained. The writ was issued and Major General Truesdell duly filed his return thereto. After a hearing, the trial court entered an order discharging the writ and remanding petitioner to the custody of Major General Truesdell. The petitioner has appealed:

The petitioner is thirty-one years of age. He graduated with honors at the University of Kansas in 1933. Thereafter, he attended the University of Paris for two years and served three years in the American Diplomatic Service at Moscow. In 1938 he spent a short vacation in China and Japan and in the fall of that year entered Harvard University. After three years of studies at Harvard, he received his Master's Degree and passed the general examination for a Doctor's Degree but did not write the thesis required for the latter degree. He became a professor in the University of Texas in the fall of 1941 where he remained until called for induction into the Army.

Petitioner registered under the Selective Training and Service Act of 1940,<sup>1</sup> 54 Stat. 885, in the first registration with local

<sup>1</sup> Hereinafter referred to as the Act.

board No. 1, for Ottawa County, Minneapolis, Kansas. He was classified in Class 1-B because of a defective eye. Later, he was reclassified and placed in Class 1-A. He sought reclassification on the ground that he was a conscientious objector. The local board denied his claim for reclassification. From that ruling he appealed. The decision of the local board was sustained by the Board of Appeals. Petitioner determined that he would not serve in the armed forces of the United States. He believed, however, that upon his physical examination, he would be rejected because of defective vision in one eye. He determined to comply with Selective Service requirements up to the point where the civil jurisdiction ceased and military jurisdiction commenced, or just short of submitting himself to the latter jurisdiction. He made inquiries of Selective Service

90 officials in Texas and of others to ascertain up to what point he could comply with the requirements of the Act and the regulations and orders made pursuant thereto, including the order of his local board to report for induction, and stop short of actual induction into the Army. He was ordered by the local board to report to Minneapolis, Kansas, for induction into the armed forces. With the consent of the local board, he joined, at Victory Junction, Kansas, the group selected for induction, and was transported to the induction station at Fort Leavenworth, Kansas. He went to the barracks, was furnished his meals and lodging, and submitted to a physical and mental examination. He was advised that he had passed and would be accepted. He was then taken to a room at the induction station and in the presence of several officers was asked to stand and take oath, which he refused to do. The oath of induction was then read to him and he was asked if he subscribed to that oath. He stated he did not. He was then informed that he was in the Army. He was then ordered to submit to having his fingerprints taken. He refused so to do. He endeavored to surrender to the civil authorities. Military charges were then preferred against him for refusing to be fingerprinted and he was confined in the guardhouse.

He predicated his petition for the writ of habeas corpus on the alleged ground that he had not been inducted into the Army and that, therefore, the military authorities had no jurisdiction over him.

Section 3 of the Act, as amended, 50 U. S. C. A. § 303, in part, provides:

"(a) Except as otherwise provided in this Act, every male citizen of the United States, and every other male person residing in the United States, who is between the ages of twenty and

forty-five at the time fixed for his registration, \* \* \* shall be liable for training and service in the land or naval forces of the United States: \* \* \*

91 Section 10 of the Act, 50 U. S. C. A. § 310, in part provides:

"(a) The President is authorized—

"(1) to prescribe the necessary rules and regulations to carry out the provisions of this Act: \* \* \*

Section 11 of the Act, 50 U. S. C. A. § 311, makes it a criminal offense for any person knowingly to fail or neglect to perform any duty required of him under or in the execution of the Act or the rules or regulations made pursuant thereto, and provides that "No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted for the training and service prescribed under this Act or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act."

The applicable regulations promulgated under the Act provide: That immediately upon determining which men are to report for induction, the local board shall prepare for each man an order to report for induction, in duplicate, and mail the original to the registrant; that from the men selected to fill the quota the local board shall designate one to be the leader of the group and one or more to be assistant leaders; that the leaders and assistant leaders shall have such authority as is necessary to deliver the group to the induction station; that the local board shall prepare government requests for transportation and for meals or lodgings for civilian registrants; that at the time and place designated for the selected men to report for delivery, the local board shall call the roll of selected men, read and issue the appointment of the leader and assistant leaders, turn over to the leader the transportation, meal and lodging requests, and the records for the induction station; and order the selected men to obey the leader and assistant leaders and report to the induction station; that the commanding officer of the induction station shall have the selected men transported

92 from the railroad station or bus terminal to the induction station and have them provided with food and lodging after their arrival and pending their induction or rejection; and that at the induction station, the selected men found acceptable will be inducted into the land or naval forces. Tit. 32, Fed. Reg., December 31, 1941, §§ 633.1 (a), 633.2 (a) (c), 633.4 (a), 636.6 (a), 633.8, 633.9.

MR. 1-7, Par. 13e (War Department Circular No. 136, 5-7-1942), in part, provides:

"(1) All men successfully passing the physical examination will be immediately inducted into the Army. The induction will be performed by an officer in a short, dignified ceremony in which the men are administered the oath, Article of War 109:

"I, -----, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the rules and Articles of War." \* \* \*

"(4) They will be informed that they are now members of the Army of the United States and given an explanation of their obligation and privileges. In the event of refusal to take oath (or affirmation) of allegiance by a declarant alien or citizen he will not be required to receive it, but will be informed that this action does not alter in any respect his obligation to the United States \* \* \*"

The underlying theory of the Act is that the obligations and privileges of military training and service should be shared generally in accordance with a fair and just system of selective compulsory military training and service.<sup>2</sup> Section 3 (a) of the Act, with certain exceptions not here material, makes every male citizen of the United States between the ages of twenty and forty-five at the time fixed for his registration, liable for training and service in the land or naval forces of the United States. When a selected man has reported for induction and been transported to the induction station and found acceptable, induction is not a matter of choice with him. Being subject to compulsory training and service, having reported for induction, and having passed the requisite examinations, it is the duty of the military authorities immediately to induct him and he cannot avoid induction by refusing to take the oath. The regulations, in effect, provide that refusal to take the oath shall not alter in any respect the selected man's obligation to the United States. Induction was completed when the oath was read to petitioner and he was told that he was inducted into the Army.

We conclude, therefore, that the military authorities had jurisdiction over petitioner and that the writ was properly discharged. Affirmed.

<sup>2</sup> 11, 54 Stat. 885, 50 U. S. C. A. § 301.

*Judgment*

May 5, 1943

Twenty-fifth Day, March Term, Wednesday, May 5th, A. D. 1943. Before Honorable Orie L. Phillips, Circuit Judge, and Honorable J. Foster Symes, District Judge.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Kansas.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed; and that Karl Truesdell, Major General, United States Army, appellee, have and recover of and from Arthur Goodwyn Billings, appellant, his costs herein.

## In United States Circuit Court of Appeals

*Note re issuance of mandate*

On June 10, 1943, the mandate of the United States Circuit Court of Appeals, in accordance with the opinion and judgment of said court, was issued to the United States District Court.

95 [Clerk's certificate to foregoing transcript omitted in printing.]

96 Supreme Court of the United States

[Title omitted].

*Order allowing certiorari*

Filed October 11, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] Enter Lee Bond. File No. 47708. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 215. Arthur Goodwyn Billings, Petitioner vs. Karl Truesdell, Major General, United States Army. Petition for a writ of certiorari and exhibit thereto. Filed July 30, 1943. Term No. 215 O. T. 1943.